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NO. 93-1209

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1993

PENROD DRILLING CORPORATION

Petitioner

VERSUS

EARL WAYNE COATS

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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RESPONSE TO PENROD DRILLING CORPORATION'S QUESTION PRESENTED FOR REVIEW

Earl Wayne Coats, plaintiff/respondent (hereinafter "Coats"), disputes that any question is presented for review before this Court at this time. The question which Penrod Drilling Corporation (hereinafter "Penrod") seeks to assert has been decided by the U.S. Fifth Circuit Court of Appeals, but is the subject of a Suggestion For Rehearing En Banc presently pending before that court. In that regard, the Suggestion For Rehearing En Banc of Penrod, statement of issues (presently pending), states:

> Whether, in a General Maritime Law case, the application of joint and several liability is incompatible with comparative fault and the requirement of justice that the parties stand as equals before the Court.

This is the same issue set forth in Penrod's "Question Presented For Review" in its Petition For Writ Of Certiorari.

Rule 11 of the Rules for the Supreme Court of the United States indicates that a petition for writ of certiorari to review a case pending in a United States court of appeals, before judgment is given in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate settlement in this Court. 28 U.S.C. §2101(e).

Penrod has not even argued that this is a case of such imperative public importance as to justify deviation from the normal appellate practice or that it requires immediate settlement in this U.S. Supreme Court. There is no question properly presented for review.

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RESPONSE TO JURISDICTIONAL STATEMENT

The jurisdictional statement of Penrod Drilling Corporation (hereinafter "Penrod") set forth herein is deficient. This is not a case contemplated within Rule 11 of the U.S. Supreme Court Rules and there has been no showing that this case is "of such imperative public importance as to justify deviation from the normal appellate practice and to require immediate settlement in this Court". (U.S. Sup.Ct. Rule 11)

There likewise has been no presentation of any special or important reasons for the granting of this writ as contemplated by Rule 10 of the U.S. Supreme Court Rules.

MISSTATEMENTS IN PETITION OF PENROD

In accordance with Rule 15.1 of the U.S. Supreme Court Rules, Earl Wayne Coats

(hereinafter "Coats") submits that the following are misstatements set forth in the Petition:

Penrod states at page 4 of its Petition that the jury found Penrod liable for only 20 percent of "the judgment amount". This is not correct. The District Court did not ask the jury to determine how much Penrod should pay. The jury contemplated that Coats would receive $740,000.00, together with interest and costs. The jury verdict form was prepared to allow the jury to give an award which would only be reduced by his percentage of fault.

After finding that the fault of Coats and Penrod each contributed 20 percent to his injuries, and the negligence of Hytorc M.E., Division of Maritime Industrial Services (hereinafter "MIS") contributed 60 percent to his injuries, the jury was asked the following question:

> 6. Please state, in dollars, the amount which will fairly compensate Earl Wayne Coats for the injuries which he sustained, without reduction for contributory negligence, if any.
>
> ANSWER: $925,000.00

The jury obviously contemplated that the amount which would fairly compensate Coats for his injuries was $925,000.00, reduced by 20 percent, or $740,000.00. Penrod did not object to the Jury Verdict Form or appeal any issue regarding language in the Jury Verdict Form.

Penrod presumes that, if given the opportunity to make the determination, the jury would have made an award of only $185,000.00 against Penrod. This is unsupported speculation and is not before this Court.

The next error/misstatement is set forth on page 5 of Penrod's Memorandum, in which it contends that the payment of $740,000.00 is four times the amount that

the jury cast Penrod in damages. As referenced on the Jury Verdict Form, Penrod was cast in judgment for $740,000.00 (together with interest and costs), the exact amount which Penrod should pay.

Penrod's next misstatement is that it would be "undeniably unfair and unjust" for the jury to cast Penrod in judgment for $740,000.00. This is not correct. Coats is a Sieracki seaman, a ward of the court and a maritime worker. In actuality, Penrod, who is presently doing business in the Persian Gulf where MIS is located, has a very good opportunity to get back from MIS (its client) whatever it is entitled to recover by way of contribution, after Penrod pays the judgment. Coats, in contrast, is a Mississippi native, hired in Mississippi, who went overseas to work under the supervision of Americans, injured on an American flag vessel, who was sent back to his home

state of Mississippi, where he is, was, and always will remain a permanent citizen. Coats does not have the business contacts or economic ability to go to the Persian Gulf area to collect the judgment from MIS; however, Penrod does. Fairness requires that Penrod pay the $740,000.00 judgment (together with interest and costs) rendered against it, in full.

The next misstatement in the Petition For Rehearing is set forth on page 7, which indicates that Coats was employed by "a United Arab Emirates corporation". The evidence showed that MIS was a United Arab Emirates ("UAE") corporation in name only. It was, in actuality, an entity set up and run by Americans. The ownership of the corporation was "in the name of" foreign nationals; however, the foreign nationals who owned MIS had no involvement in the operation, management or control, and essentially received ten percent of the

profits by allowing their names to be used as owners. MIS never even had any UAE employees.

Coats disagrees with the historical synopsis set forth on pages 10-12, et seq. of Penrod's Writ Application. Joint and several liability is and has been the rule in maritime cases for the past hundred years, and uniformly is set forth in decisions of the U.S. Supreme Court and all federal court circuits which have addressed the issue. This is not a "state law case" and there is no consensus among the states of the United States with regard to joint liability. In fact, numerous states take different approaches depending upon their policies, desires and choices. In contrast to the lack of uniformity in the state court system, the federal decisions have uniformly applied joint and several liability. Edmonds v. Compagnie Generale Transatlantique,

99 S.Ct. 2753, 2755, 2762 (1979), reh'g denied, 100 S.Ct. 194 (1979); Simeon v. T. Smith & Son, Inc., 852 F.2d 1421 (5th Cir. 1988), reh'g and reh'g en banc denied, 860 F.2d 1255 (5th Cir. 1988), cert. denied, 109 S.Ct. 3156 (1989).

Penrod's next misstatement is that there was a violation of instructions of U.S. District Judge Charles Pickering because Penrod was not treated "equally" to Coats. This is not correct. If Penrod was a plaintiff bringing a maritime claim against two defendants, then it would be entitled to obtain a joint and several judgment just as Coats did in this case (and just as every other plaintiff in maritime cases has done across the federal circuits for the past 100 years).

Another misstatement by Penrod is:

> No longer do a majority of jurisdictions in the country continue to apply the doctrine of joint liability, as was the case when Simeon, supra, was decided ....

This is not correct. All known jurisdictions do continue to apply the doctrine of joint and several liability -- in maritime cases. This, as admitted by Penrod in its Petition, at page 30, is a maritime law case. Therefore, the uniform maritime law must be applied.

Penrod misstates the facts surrounding Coats' employment on page 32 in numerous respects. Penrod says that Coats "accepted a job in the UAE", whereas the undisputed evidence is that Coats was hired and accepted his employment in Mississippi at his grandmother's house. Penrod states, at page 32, that Coats "had no reservation about going to the UAE to work for MIS". This is not correct. Testimony submitted at trial confirmed that in order to get him to leave his native state of Mississippi and go to the UAE, Mr. David Shelton, an American principal of MIS, told Coats that his job

overseas was "so easy that monkeys could do it". This was not true, and the jury found that MIS (and possibly Penrod) failed to provide proper training to Coats.

Penrod then states that Coats "has no complaint about going there [overseas] to collect his judgment". This is incorrect. The Original Brief submitted by Coats to the U.S. Fifth Circuit Court of Appeals specifically stated:

> Coats would simply reiterate to this [U.S. Appellate] Court that, without the joint and several liability rule, he will never collect from MIS. That is what Penrod is likewise trying to avoid because Penrod does not want to go through the trouble of collecting back what it might be required to pay as MIS's share. Penrod is certainly in a very good position, as the client of MIS, to collect back the share it is required to pay on behalf of MIS -- certainly Penrod is in a better position than Coats is in trying to collect ....

Coats complained about his inability to do what Penrod probably can do: collect from MIS.

Another misstatement is on page 32, where Penrod states:

> The fact that Coats was the injured party is equally his own fault as it was Penrod's and this fact affords him no additional rights.

Although confusing, this statement is inaccurate. Coats is a Sieracki seaman, as found by the jury, and this issue was not even appealed. He is an offshore worker -- a remnant Sieracki seaman, similar to the plaintiffs in Aparicio v. Swan Lake, 643 F.2d 1109 (5th Cir. 1981), and Cormier v. Oceanic Contractors, Inc., 696 F.2d 1112 (5th Cir. 1983), cert. denied, 104 S.Ct. 85 (1983). Coats has greater rights, as a ward of the court, than Penrod.

SIGNIFICANT INFORMATION OMITTED BY PENROD

Penrod did not inform the Court that the injury to Coats was so bad, so serious, so egregious and so disabling that neither defendant even appealed the award of quantum: $925,000.00.

Penrod failed to provide the Court with the full citation of Simeon v. T. Smith & Son, Inc., 852 F.2d 1421 (5th Cir. 1988), reh'g and reh'g en banc denied, 860 F.2d 1255 (5th Cir. 1988), cert. denied, 109 S.Ct. 3156 (1989).

Penrod failed to mention that the unanticipated explosion which occurred involved Penrod equipment which was defective and blew up injuring Coats.

Penrod did not disclose to the Court that Coats was a Sieracki seaman, entitled to a warranty of seaworthiness from Penrod under the General Maritime Law, and that the jury found that Rig No. 69 was unsea-

worthy and that unseaworthiness caused the injury to Coats.

ARGUMENT

The uniform application of joint and several liability is applicable in maritime cases. Edmonds v. Compagnie Generale Transatlantique, supra. Joint and several liability is the uniform maritime rule of the federal circuit courts. Joia v. Jo-Ja Service Corp., 817 F.2d 908, 917 (1st Cir. 1987), cert. denied, 108 S.Ct. 703 (1988); Zapico v. Bucyrus-Erie Co., 579 F.2d 714, 725 (2nd Cir. 1978); Simeon v. T. Smith & Son, Inc., supra, at 1431; Central Rivers Towing v. City of Beardstown, 750 F.2d 565, 575 (7th Cir. 1984); Shellman v. United States Lines, Inc., 528 F.2d 675, 680-681 (9th Cir. 1975), cert. denied, 96 S.Ct. 1668 (1976); Dodge v. Mitsui Shintaku Ginko K.K. Tokyo, 528 F.2d 669, 673 (9th Cir. 1975), cert. denied,

96 S.Ct. 1685 (1976); Drake Towing Co. v. Meisner Marine Constr. Co., 765 F.2d 1060, 1067 (11th Cir. 1985); reh'g and reh'g en banc denied, 773 F.2d 1239 (11th Cir. 1985); Ebanks v. Great Lakes Dredge & Dock Co., 688 F.2d 716, 722 (11th Cir. 1982), reh'g and reh'g en banc denied, 693 F.2d 135 (1982), cert. denied, 103 S.Ct. 1774 (1983).

Coats, as a Sieracki seaman and ward of the court, is entitled to the protections of maritime law, including the uniform "joint and several" liability rule.

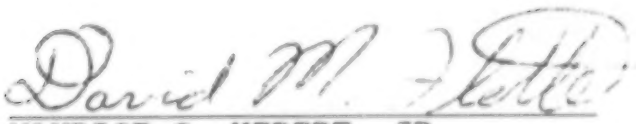
Penrod has a realistic opportunity to get its money back from MIS, whereas Coats does not have the business contacts or financial ability to pursue MIS overseas. The accident of Coats occurred almost five years ago, and Coats still has not seen any money from the judgment rendered herein or the jury verdict. With regard to equity, Coats should not have to wait

any longer for payment of what he is owed by defendants.

CONCLUSION

The Petition For Writ Of Certiorari should be denied.

Respectfully submitted,



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CERTIFICATE

I hereby certify that a copy of the above and foregoing Opposition Brief has served on all counsel of record, as set forth below, on this 10th day of February, 1994:

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